

Virginia Regulatory Town Hall

Proposed Regulation Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulations for the Control and Abatement of Air Pollution
Primary Action:	9 VAC 5-20-21
Secondary Action(s):	9 VAC 5-10-20, 9 VAC 5-40-460, 9 VAC 5-40-2930, 9 VAC 5-40-5210, 9 VAC 5-40-5230, 9 VAC 5-40-8130, 9 VAC 5-40-8150, 9 VAC 5-80-10, 9 VAC 5-80-370, 9 VAC 5-80-390, 9 VAC 5-80-1710, 9 VAC 5-80-2010
Action Title:	Technical Documents Incorporated by Reference
Date:	November 2000

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

Summary *

Please provide a brief summary of the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation.

The proposal is being promulgated to incorporate the latest edition of referenced technical documents. The amendments are needed because the agency's regulations must be current and timely, which means that documents incorporated by reference must be the most recent edition.

Basis *

Please identify the section number and provide a brief statement relating the content of the statutory authority to the specific regulation proposed. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Written assurance from the Office of the Attorney General that (i) the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments and that (ii) the proposed regulation amendments comport with the applicable state and/or federal law is available upon request.

Purpose *

Please provide a statement explaining the rationale or justification of the proposed regulation as it relates to the health, safety or welfare of citizens.

The purpose of the regulation is to incorporate technical documents that are referenced in the regulations. These documents are required by federal law or regulation, and are included in order to ensure that the air pollution control regulations are properly implemented. The proposed amendments are being made to ensure that the most up-to-date and technically accurate documents are used, thus ensuring the proper implementation of the air pollution control regulations, and thereby protecting the public health and welfare.

Substance *

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.

1. The newest editions of technical documents are being incorporated.
2. References to individual documents throughout the regulations have been revised for clarity, updated, or corrected.

Issues *

Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public of implementing the new or amended provisions; and 2) the primary advantages and disadvantages to the agency or the Commonwealth. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

1. Public: There are no disadvantages to the public associated with this regulation while there are a number of advantages. The health and welfare of individual citizens will be better protected through the efficient and accurate implementation of air pollution control measures. Use of these standards is also advantageous to industry, as they provide scientific and technical information otherwise not readily obtainable by individual facilities. Use of these standards assures convenience and consistency for their users, as well as a strong degree of confidence in their accuracy.

2. Department: There are no disadvantages to the Department associated with this regulation while there are a number of advantages. The amendments concern documents that are technical in nature and pertain to areas in which the agency has limited expertise or resources to conduct extensive research. In addition, the agency must ensure that its references to technical standards are consistent with standards developed and accepted by the scientific and industrial communities. By keeping state requirements consistent with these standards, the state and the regulated community avoid conflict and confusion, and ensure technical accuracy. Relying on existing standards also saves the state time and financial resources by eliminating duplication of research.

Localities Particularly Affected *

Please provide the identity of any localities particularly affected by the proposed regulation.

There is no locality which will bear any identified disproportionate material air quality impact due to the proposed regulation which would not be experienced by other localities.

Public Participation *

Please indicate the nature of the comments the Department is soliciting pursuant to this notice.

The Department is seeking comment on the proposed regulation and the costs and benefits of the proposal.

Impact

Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and (e) the projected cost of the regulation for affected individuals, businesses, or other entities. Include a description of the beneficial impact the regulation is designed to produce.

1. Entities Affected

The regulation applies to the owner of any commercial/industrial facility that is subject to any emission standard within the regulations.

2. Fiscal Impact

a. Costs to Affected Entities

The costs to affected entities is expected to be minimal. The impact of incorporating technical documents is minimal because they are used to form the basis to make technical evaluations needed to implement the regulations. The requirement for these technical evaluations already exists in the current regulations and the use of the latest edition ensures that such evaluations are soundly based.

b. Costs to Localities

The projected cost of the regulation on localities is not expected to be beyond that of other affected entities and are addressed in paragraph 2a above.

c. Costs to Agency

It is not expected that the regulation will result in any cost to the Department beyond that currently in the budget. The costs are expected to be ongoing. The sources of Department funds to carry out this regulation are the general fund and the federal trust (grant money provided by the U.S. Environmental Protection Agency under Section 105 of the federal Clean Air Act or permit fees charged to affected entities under the permit program). The activities are budgeted under the following program (code)/subprogram (code): Environmental and Resource Management (5120000)/Air Quality Stationary Source Permitting (5122000) and Air Quality Stationary Source Compliance Inspections (5122100).

d. Benefits

As discussed above, the amendments will ensure the efficient and accurate implementation of air pollution control regulations, thus protecting the public health and welfare, and minimizing costs to affected entities and the Department.

e. Small Business Impact

The impact upon facilities that meet the definition of small business provided in § 9-199 of the Code of Virginia is addressed in paragraph 2a above.

Legal Requirements

Please identify the state and/or federal source of the legal requirements that necessitate promulgation of the contemplated regulation. The discussion of these requirements should include a description of their scope and the extent to which the requirements are mandatory or discretionary. Full citations for the

legal requirements and web site addresses, if available, for locating the text of the cited legal provisions should be provided.

Federal Requirements

Federal Clean Air Act (CAA):

<http://www.epa.gov/ttn/oarpg/gener.html>

Code of Federal Regulations (CFR):

<http://www.access.gpo.gov/nara/cfr/cfr-retrieve.html>

Federal Register (FR):

http://www.gpo.gov/su_docs/aces/aces140.html

Section 110, paragraph 2 of Title I of the Clean Air Act Amendments of 1990 (42 USC 7471) requires that the state implementation plan shall "provide for the establishment and operation of appropriate devices, methods, systems, and procedures necessary to . . . monitor, compile, and analyze data on ambient air quality . . ." This law is implemented by EPA through the Code of Federal Regulations, 40 CFR Part 51, section 51.212, which states that the plan must provide for "enforceable test methods for each emission limit specified in the plan."

To meet this requirement, the Department has, where appropriate, incorporated by reference a series of mostly industry-generated test methods that reflect the most current technical information available and that will enable the state to meet this Act requirement.

Comparison with Federal Requirements

Please describe the provisions of the proposed regulation which are more restrictive than applicable federal requirements together with the reason why the more restrictive provisions are needed.

The proposed regulation amendments are not more restrictive than the applicable legal requirements.

Need

Please provide an explanation of the need for the proposed regulation and potential consequences that may result in the absence of the regulation. Also set forth the specific reasons the agency has determined that the proposed regulatory action would be essential to protect the health, safety or welfare of citizens or would be essential for the efficient and economical performance of an important governmental function. Include a discussion of the problems the regulation's provisions are intended to solve.

The amendments are needed because the regulations must be current and timely, which means that the technical documents incorporated must be the most recent edition. EPA has indicated that it will not approve state plans if the technical documents referenced are not up to date and accurate. In addition to meeting federal requirements for the provision of enforceable test methods which are acceptable to EPA,

incorporation of these documents has many additional advantages to the public and to the state.

The amendments concern documents that are technical in nature and pertain to areas in which the agency has limited expertise or resources to conduct extensive research. For example, the "Flammable and Combustible Liquids Code," which is published by the National Fire Protection Association as an American National Standard contains important information that would not otherwise be readily determined by the state with its own devices.

In addition, the agency must ensure that its references to technical standards--for example, test methods--must be consistent with standards developed and accepted by the scientific and industrial communities. By keeping state requirements consistent with these standards, the state and the regulated community avoid conflict and confusion, and ensure technical accuracy.

Use of these standards is beneficial to industry. Most of the standards have been developed by industrial professional societies. Like the state, many industries do not have the wherewithal to do their own research and develop their own standards. Use of these standards assures convenience and consistency for their users, as well as a strong degree of confidence in their accuracy.

Relying on existing standards also saves the state time and financial resources by eliminating duplication of research. Finally, the regulations must reflect the most up-to-date technical information available to ensure that public health and welfare are protected.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description of changes implemented by the proposed regulatory action. Where applicable, include cross-referenced citations when the proposed regulation is intended to replace an existing regulation.

1. The newest editions of technical documents are being incorporated. [9 VAC 5-20-21]
2. References to individual documents throughout the regulations have been revised for clarity, updated, or corrected. [9 VAC 5-10-20, 9 VAC 5-40-460, 9 VAC 5-40-2930, 9 VAC 5-40-5210, 9 VAC 5-40-5230, 9 VAC 5-40-8130, 9 VAC 5-40-8150, 9 VAC 5-80-10, 9 VAC 5-80-370, 9 VAC 5-80-390, 9 VAC 5-80-1710, 9 VAC 5-80-2010]

Alternatives

Please describe the process by which the agency has considered less burdensome and less intrusive alternatives for achieving the need. Also describe, to the extent known, the specific alternatives to the

proposal that have been considered to meet the need, and the reasoning by which the agency has rejected any of the alternatives considered.

As provided in the public participation procedures of the State Air Pollution Control Board, the Department included, in the Notice of Intended Regulatory Action, a description of the Department's alternatives and a request for comments on other alternatives and the costs and benefits of the Department's alternatives or any other alternatives that the commenters provided.

Following the above, alternatives to the proposed regulation amendments were considered by the Department. The Department determined that the first alternative is appropriate, as it is the least burdensome and least intrusive alternative that fully meets the purpose of the regulation. The alternatives considered by the Department, along with the reasoning by which the Department has rejected any of the alternatives being considered, are discussed below.

1. Amend the regulations to satisfy the provisions of the law and associated regulations and policies. This option is being selected because it meets the stated purpose of the regulatory action: to ensure that technical documents incorporated by reference into the Commonwealth's regulations are complete and accurate.
2. Take no action to amend the regulations and continue using outdated references. This option is not being considered because it would result in the use of outdated and inaccurate information.

Public Comment

Please summarize all public comment received during the NOIRA comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

No public input was received during the public comment period for this intended regulatory action.

Clarity of the Regulation

Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

The Department, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

Periodic Review

Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable

regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.

The Department will initiate a review and re-evaluation of the regulation to determine if it should be continued, amended, or terminated within three years after its effective date.

The specific and measurable goals the proposed regulation amendments are intended to achieve are as follows:

1. To protect public health and welfare with the least possible cost and intrusiveness to the citizens and businesses of the Commonwealth.
2. To provide general administrative provisions that support other provisions of the Regulations for the Control and Abatement of Air Pollution (9 VAC 5 Chapter 10 through 9 VAC 5 Chapter 80) in order to efficiently administer air quality programs.

Family Impact Statement

Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.